Briefing

EU Legislation in Progress

European Parliament

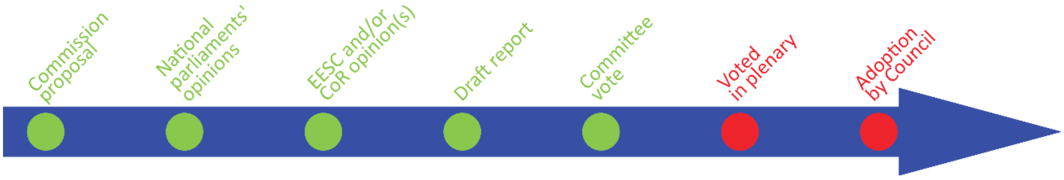
CONTENTS

Tax transparency for intermediaries

The situations highlighted by the 'Panama papers' and 'Paradise papers', among others leaks show how certain intermediaries and other providers of tax advice appear to have facilitated companies and individuals in avoiding taxation, often through complex cross-border schemes involving routing assets to, or through, offshore entities. Among the tools to fight tax avoidance and aggressive tax planning are established mechanisms for disclosure of tax information and publication of tax-relevant information by companies.

In June 2017, the Commission adopted a proposal aimed at ensuring early information on such situations, by setting an obligation to report cross-border arrangements designed by tax intermediaries or taxpayers and by including the information collected in the automatic exchange of information between tax authorities within the European Union. The proposal responds to calls made by both the European Parliament and the Council.

Proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements	
COM(2017) 335, 21.6.2017, 2017/0138 (CNS), Consultation procedure – parliament adopts only a non-binding opinion	
Committee responsible:	Economic and Monetary Affairs (ECON)
Rapporteur:	Emmanuel Maurel (S&D, France)
Shadow rapporteurs:	Fulvio Martusciello (EPP, Italy) Pirkko Ruohonen-Lerner (ECR, Finland) Lieve Wierinck (ALDE, Belgium) Dimitrios Papadimoulis (GUE/NGL, Greece) Molly Scott Cato (Greens/EFA, UK) Barbara Kappel (ENF, Austria)
Next steps expected:	Vote in plenary



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Second edition

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

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Introduction

Tax transparency has become a mainstream concept which can appear simple at first, but has different components. Each of them aims at shifting the balance, to provide tax authorities with sufficient information to assess the part of an activity with multinational reach (run by multinational business or individuals) which is within its jurisdiction. The objective is to obtain a fuller picture which allows the identification of situations that may qualify as tax avoidance or aggressive tax-planning, resulting in the erosion of the taxpayer's tax base and thus to lost resources for countries.[1]

Context

Tax avoidance and tax planning challenges are rooted in the fact that a tax jurisdiction covering (part of) a state has jurisdiction over tax matters only within its geographical limits (or when the matters are related to its territory in tax terms) whereas some taxpayers – some of them enterprises (multinational enterprises, MNEs, also referred to as transnational corporations or multinational companies) and some individual taxpayers, or high net worth individuals (HNWI) – operate globally.

Delineating the tax base for taxpayers with a tax presence in more than one country

The international tax system was designed for the economic context of the 1920s, when business was grounded in a physical or legal presence in local markets, whereas this is often not the case today, with global activity and flows of money that move easily. Defining tax bases implies having a full picture of the taxpayer situation, including those parts that are outside the jurisdiction, and determining which part refers to which jurisdiction.

As for MNEs, the term 'multinational' refers to an economic entity spanning different countries and legal systems with different legal entities (subsidiaries, branches, etc.) connected to the MNE but considered separately in several tax bases (treated by several tax jurisdictions).[2] MNE is not a legal concept, however. In addition, legal entities do not fully match with the tax concept of permanent establishment. As a result, the web of entities constituting an MNE is not considered in its entirety, though the business may be run as a whole. Similar challenges exist for determining the tax base of individuals whose wealth is located in different tax jurisdictions, under distinct forms.[3]

1 For an assessment see the 2015 EPRS study (European Added Value Unit) Bringing transparency, coordination and convergence to corporate tax policies in the European Union: Assessment of the magnitude of aggressive corporate tax planning and the 2017 study for the PANA Committee, The impact of schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States, which covers a sample of eight Member States (Cyprus, Czech Republic, Denmark, France, Germany, Poland, Spain and the United Kingdom). The assessment of the revenue loss in the form of tax gaps is estimated is approximately €19 billion and 'if this estimate is scaled up, this suggests a cost of the schemes to the EU-28 in the range of €109 billion – 237 billion' (p.45).

2 The national/jurisdiction level applies in particular for the application of tax rules and audit rules, with the legal fiction that each entity of an MNE is a separate entity, to be dealt and audited within that jurisdiction.

3 Structures, tools and schemes shielding the UBOs at the centre of the 'Panama papers' are assessed in the study for the PANA committee The impact of schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States, op. cit.

Some structures used in the management of wealth or financial flows obfuscate the ownership of assets, in other words they shield the ultimate beneficial owner (UBO). By doing so they make it impossible to assign assets to a taxpayer, allowing the UBO not to have the assets taken into account in their tax base. Tools which can serve this purpose include shell corporations, foundations and trusts, which combined with location in an offshore jurisdiction, in particular in those that are non-transparent (meaning having no or limited sharing of information with other tax jurisdictions) prevent tax jurisdictions from taking relevant assets into account in the tax base. The result is 'not law-breaking, but using the law to create all-but-impenetrable barriers to ownership'.[4] Such structures can involve intermediaries in the planning, set-up and management phases.

Tax avoidance, aggressive tax planning, transparency and reputation

Tax avoidance is distinct from tax evasion and fraud (both of which are illegal[5]), in so far as it remains within the limits of the law. Avoidance involves a certain level of interpretation, the legality of which in the end is decided by the jurisdiction. Aggressive tax planning organises flows of money or profit-shifting among jurisdictions in which the taxpayer is operating, it does not match the legal concepts of tax avoidance, evasion and fraud but is a mix of them. Aggressive tax planning has a cross-border dimension and relies on arbitration between one national law and another, and counts on secrecy and opacity obscuring the links between assets and owners. As regards companies, the phenomenon is referred to as 'base erosion and profit shifting' (BEPS). The fight against BEPS practices was discussed in the OECD/G20 forum, resulting in the 15-action plan of November 2015.

Tax avoidance and aggressive tax planning can be seen as a risk-taking strategy. When a company adopts broad interpretations or complex and sophisticated strategies to exploit the legal loopholes in tax systems and asymmetries between national rules, an additional tax risk is taken, beyond the risk threshold inherent in a company's business. A key feature of sophisticated tax-planning structures is that each component taken individually is legal with regard to the rules of the relevant country, but in combination with the other elements, avoidance appears.[6]

When the tax authorities are unaware of tax-planning arrangements, there is little likelihood of administrative and judicial review (which ultimately determines whether the avoidance strategy is legal or not and, consequently, whether there are taxes to pay). In such cases, the tax risk (e.g. the latitude taken when interpreting a rule or its application) is masked by lack of transparency. This means that it could be even greater, since there is little chance (risk) of the relevant authorities being able to evaluate it.

4 For more, see answers from Brooke Harrington to PANA written questions in the context of the 24 January 2017 public hearing on 'The Role of Lawyers, Accountants and Bankers in Panama Papers'.

5 The distinction between tax evasion and fraud is defined by national laws and can be based on the importance of the offence or the intentionality. For an overview, see for instance the 'General report' 'Surcharges and Penalties in Tax Law' (Roman Seer, Anna Lena Wilms, EATLP Congress Milano, 28-30 May 2015) and Annexes.

6 For further details see 'Written questions to Professor Ronen Palan, Senior advisor, Tax Justice Network' in the context of the 24 January 2017 public hearing on 'The Role of Lawyers, Accountants and Bankers in Panama Papers': 'Viewed separately, each component of an international structure would be entirely legal, in term of the laws of the country in which that portion is registered, and often, appear very innocent, but only in combination with other components located in different countries, the true purpose of the structure is revealed.'

Situations highlighted by the 'Panama papers' and 'Paradise papers'[7] show how certain intermediaries and other providers of tax advice appear to have facilitated companies and individuals in avoiding taxation, often through complex cross-border schemes, namely routing money offshore. The situations revealed, though dramatic, were not unknown.[8] In particular, the role of schemes (marketed or not) was discussed in several countries, in particular in parliamentary reports,[9] and also appears in some tax rulings taking into account schemes, marketed or in-house, and in recent leaks or state aid procedures.

Tax transparency, a new step to draw the full picture

However, if transparency measures can or do reveal a company's risk-taking policy, the risk is more likely to materialise and to have an impact and cost for the company (including reputation and the cost of negative publicity associated with activities in tax havens). Among the tools to fight tax avoidance and aggressive tax planning are established mechanisms for disclosure of tax information and publication of tax-relevant information by companies. The tax transparency spectrum ranges from providing limited information to a single tax administration, to wider dissemination through exchange of information mechanisms, to information made available to the public at large.

The transparency requirement, as an obligation to exchange tax information between tax authorities, is meant to re-establish the match between global tax bases and tax jurisdictions dealing with those, with a view to provide a full picture of those situations, as early as possible, bridging discrepancies between the legal form (on a country basis) and economic substance (on a global scale).

A mandatory disclosure regime (MDR) would require tax advisers and tax intermediaries to disclose schemes which include features likely to indicate that they could be aggressive tax planning schemes. It aims at:

- providing tax authorities with information (remedying the lack of available information),
- allowing more efficient targeting of tax audits (identifying both the tax professionals promoting, and users of, tax-avoidance schemes), and
- acting as a disincentive to promoting and implementing such schemes.

7 For a presentation of the schemes revealed by the Panama Papers and their impact, refer to the April 2017 study for the PANA committee (on the inquiry committee see the November 2016 study on 'The Mandate of the Panama Inquiry Committee - an Assessment' and the committee website). See the following short presentation of the Paradise papers
8 See Ms Harrington's answers to question 5 answering that the Panama papers did not reveal anything new.
9 As examples, in 2003 the USA where a 2003 Senate Committee on governmental affairs drafted a report which title is 'US tax shelter industry: the role of accountants, lawyers and financial professionals', in 2013 the French Senate report on 'Évasion des capitaux et finance : mieux connaître pour mieux combattre' or in 2015 the UK 'Public Accounts Committee', 'Tax avoidance: the role of large accountancy firms (follow-up)'.

Existing situation

So far, the disclosure of tax avoidance has been discussed and addressed in some countries whose experience fed into the 'BEPS action 12' work and final report. They tend to rely on disincentives, favouring positive compliance.

BEPS action 12

BEPS action 12's objective is to give tax authorities timely information about taxpayer behaviour, and facilitate early identification of issues. It provides a series of recommendations (as alternative options) about the design of mandatory disclosure regimes (MDR) aimed at 'providing tax authorities with relevant information about taxpayer compliance that is more detailed and timely than information recorded on a tax return'. It presents an overview of existing MDR regimes, sets out both the framework and features for the modular design of a MDR, assesses how international transactions can best be captured by a MDR and considers exchange of information.[10]

The Action 12 report does not provide for a minimum standard (bearing in mind that the 15 BEPS reports only provide, altogether, for four minimum reports). It gives countries the freedom to choose to adopt them as an answer to tax risks posed by tax-planning schemes.

Administrative cooperation in direct taxes in the EU

Administrative cooperation in the field of direct taxation was formally established in 1977 under Council Directive 77/799/EEC, which complemented the mutual assistance provisions set out in bilateral tax agreements concluded between Member States. The current framework is Council Directive 2011/16/EU concerning administrative cooperation in the field of taxation (referred to as **DAC1**), amended several times since then. The DAC provides for spontaneous, automatic and 'on request' exchange of information. It establishes mechanisms for the participation of Member States' authorities in administrative enquiries, and simultaneous controls and mutual notifications of tax decisions. It also provides for the necessary practical tools, such as a secure electronic system for information exchange.

The DAC has so far undergone four revisions between 2014 and 2016. The first revision (Council Directive 2014/107/EU), adopted on 9 December 2014, amended the DAC as regards mandatory automatic exchange of information in the field of taxation, aligning EU law with the AEOI (automatic exchange of information) global standard (second 'version' of DAC – **DAC2**). The second revision (Council Directive (EU) 2015/2376) was adopted on 8 December 2015, and amended the DAC to extend the mandatory automatic exchange of information to rulings and advance-pricing arrangements (third 'version' of DAC – **DAC3**). The third revision (Council Directive (EU) 2016/881), adopted on 26 May 2016, provides for extending further the exchange of information to include country by country reporting[11] reflecting the framework of the minimum standard provided by BEPS action 13 (fourth 'version' of DAC – **DAC4**). The fourth revision (Council Directive (EU) 2016/2258), adopted on 6 December 2016, adds access by tax authorities to information based on Directive

10 See Annex 6 of the impact assessment accompanying the proposal.
11 Note that the proposal on public country-by-country reporting (2016/0107(COD)) is an amendment to the Accounting Directive (Directive 2013/34/EU).

2015/849/EU (on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing – referred as AML 4) relating to customer due diligence measures, information relating to beneficial ownership and access to information from automated centralised mechanisms (fifth 'version' of DAC – **DAC5**).

Intermediaries

Intermediaries provide assistance or advice and material aid in the management of the wealth or financial flows of their clients. As regards tax, the problem to be solved is to identify the components of their tax base, some of which may be shielded behind non-transparent entities preventing their identification as UBOs[12] and the visibility of the entirety of a taxpayer's situation.

Intermediaries can have different professions and professional qualifications, including: accounting firms, accountants working for banks, law firms (large and small) and specialist tax lawyers working for banks or MNEs, wealth management professionals and offshore specialist providers. This implies that the professional requirements and rules on independence and responsibility,[13] in particular applying to intermediaries, depend on the profession and the country in which the intermediaries operate. Finally, there is a wide range of situations across the EU where, depending on the Member State, the same profession may be regulated, self-regulated or not regulated; divergences also exist with regard to professional secrecy and in relation to specific regulations, namely the anti-money laundering provisions.

Comparative elements[14]

Prior to BEPS action 12, some countries had adopted and implemented MDR. the BEPS action 12 overview of mandatory disclosure regimes is based on the experience of countries that have implemented such regimes.[15]

In the EU, this is the case of the United Kingdom, Ireland and Portugal.[16] In Ireland, MDR was introduced in 2011 and is intended to act as an early warning mechanism. In the United Kingdom, Disclosure of Tax Avoidance Schemes (DOTAS) came into force in 2004. A tax-planning scheme that exhibits any of a number of 'hallmarks' must be reported to the tax authority and taxpayers using such a scheme must report this on their tax returns. Tax professionals failing to comply with this requirement risk being labelled a POTAS (Promoter of Tax Avoidance Schemes) and have penalties imposed. In Portugal[17] a tax-planning disclosure

12 The types of UBOs are described in the study Role of advisors and intermediaries in the schemes revealed in the Panama Papers, p.15.
13 See study Rules on independence and responsibility regarding auditing, tax advice, accountancy, account certification services and legal services, and presentation made to the PANA committee on 2 May 2017.
14 This section aims to provide some relevant elements but is not intended to be exhaustive.
15 See report p.23 sq. 'the United States, Canada, South Africa, the United Kingdom, Portugal, Ireland, Israel and Korea', South Africa.
16 A presentation of those regimes is provided in Annex 7 of the impact assessment accompanying the proposal. As for the regime in force in the United Kingdom a presentation is also available in the study Rules on independence and responsibility regarding auditing, tax advice, accountancy, account certification services and legal services, in part 4 on the UK, paragraph on 'Professional obligations under UK tax legislation'.
17 Decree-Law 29/2008, of 25 February 2008.

regime has been in place since 2008, covering corporations and individuals for schemes or conduct falling within a number of defined hallmarks.

In the United States there are a number of provisions of US federal tax laws regarding the conduct of those who represent taxpayers, whatever their profession is. The Internal Revenue Code requires that a taxpayer must disclose with their return any 'reportable transaction' on the basis of five categories of reportable transactions (hallmarks), including confidential transactions and loss transactions.[18] In addition, a number of countries[19] are in the process of taking action further to BEPS action 12.

Some issues appear to be important with regard to the exchange of information. A global scheme could build on national provisions in the field, such as the US FATCA and how it deals with 'two thorny regulatory problems' which are the sovereign and the liability problems.[20]

Parliament's starting position

The European Parliament in its resolution on tax rulings and other measures similar in nature or effect, adopted on 6 July 2016, called 'on the Commission to come forward with a legislative proposal introducing a mandatory disclosure requirement for banks, tax advisers and other intermediaries concerning complex structures and special services that are linked to jurisdictions included on the common EU list of tax havens and non-cooperative jurisdictions which are designed for and being used by clients to facilitate tax evasion, tax fraud, money laundering or terrorist financing'.

In the course of its work the European Parliament's Money laundering, tax avoidance and tax evasion (PANA)[21] committee gathered expertise relating to questions at stake in the present proposal (see 'EP supporting analysis' below).

Council starting position

The Council, in its conclusions adopted on 8 December 2015, on Base Erosion and Profit Shifting (BEPS) invited 'the Code of Conduct Group to assess the opportunity of developing EU guidance for implementing OECD BEPS conclusions on Action 12 (disclosure of aggressive tax planning), notably with a view to facilitate exchange of such information between tax authorities.'

18 See presentation in the study Rules on independence and responsibility regarding auditing, tax advice, accountancy, account certification services and legal services, part 10.
19 A review of national measures of a number of countries can be found in 'BEPS action implementation by country - Action 12 (data between March-May 2017).'
20 See R. Palan's answers to written questions referred to above, 'FATCA addressed two thorny regulatory problems. First, the sovereign problem. How can one state legislate for another its taxation and regulation rules? Second, liability. Traditionally liability was with the client, whereas the intermediaries were mere facilitators. FATCA solved the two problems by doing the following: First, unlike the OECD FATCA does not seek change in offshore jurisdictions. FATCA merely insists that clients who wish to trade in the U.S. or with a U.S. entity must provide transparency of information. Clients may, of course, chose not to, but then they would not be able to trade in the US.'
21 The work of the committee concluded on 12 December 2017 with the adoption of recommendations in plenary on the basis of the report adopted by the inquiry committee on 18 October 2017.

On 25 May 2016, the Council in its conclusions adopted on the 'Commission communication on an External Strategy and Recommendation on the implementation of measures against tax treaty abuse' (part of the anti-tax avoidance package presented by the Commission on 28 January 2016) also invited 'to consider legislative initiatives on Mandatory Disclosure Rules inspired by Action 12 of the OECD BEPS project with a view to introducing more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes'.

Proposal

Preparation of the proposal

On 5 July 2016, the European Commission adopted a communication 'on further measures to enhance transparency and the fight against tax evasion and avoidance', reacting to the 'Panama Papers' of April 2016, and two legislative proposals (respectively on the anti-money-laundering directive – still under discussion – and on administrative cooperation – Council Directive (EU)2016/2258, adopted on 6 December 2016). The communication considers oversight of tax advisors' activities by way of mandatory reporting rules for tax advisers and 'promoters' of tax planning schemes, in order to create effective disincentives for those that promote and enable aggressive tax planning.

A public consultation was organised to gather stakeholders' positions, and a consultation with Member States was also organised. The outcome is presented in annex 2 of the impact assessment accompanying the proposal and a consultation with Member States.

The changes the proposal would bring

The proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements aims at ensuring early information on such situations.

The proposal requires intermediaries to disclose cross-border (between Member States or with a third country) aggressive tax-planning arrangements to the tax authorities if they participate in their design and promotion, because of the potential impact on the functioning of the internal market (mandatory disclosure regime). The information disclosed is to be included in the scope of the automatic exchange of information between national tax authorities set in the DAC (by submitting the arrangements disclosed to a central directory to which all Member States have access). If the intermediaries are not located in the EU, the obligation applies to the taxpayer.

The proposal would amend DAC by adding definitions of cross-border arrangement, reportable cross-border arrangement, hallmark, intermediaries, taxpayer (with reference to the use of reportable cross-border arrangements) and associated enterprise (amendments to Article 3 DAC). Identification of aggressive tax-planning arrangements is based on hallmarks matching commonly found features in aggressive tax-planning schemes defined in an annex to the proposal (due to become annex IV to the DAC) which can be updated by implementing acts (new article 23aa and amendment to Article 26a). Identified hallmarks indicate which types of schemes would have to be reported (because they merit scrutiny, although that does not mean that they are harmful).

The proposal would amend DAC also by inserting a new article 8aaa relating to the mandatory exchange of information on reportable cross-border arrangements:

> The first paragraph sets the obligation on intermediaries (or the taxpayer) and a five-working day deadline for doing so, that is before the arrangement can be used.

> The second paragraph addresses the situation when a legal professional has a waiver from filing the requested information, (in which case the obligation falls on the taxpayer) and provides that the intermediaries have a duty to inform them about this obligation. It also addresses the situation when the intermediaries are not located in the EU, in which case the obligation lies on the taxpayer.

> Paragraph 3 relates to the case where there are several intermediaries.

> Paragraph 4 relates to the filing of information between the political agreement and the implementation deadline of 31 March 2019.

> Paragraph 5 provides for automatic exchange by Member States.

> Paragraph 6 provides for a list of information to be exchanged. There are a total of eight headings, covering the identity of taxpayer and intermediaries, the hallmarks that apply to the arrangement, a summary of the latter, the date of its implementation, detail of applicable national provisions, value of the transactions, Member States involved or likely to be involved, and identification of person likely to be affected.

> Paragraph 7 provides for recourse to standardised communication (centralised database).

> Paragraph 8 provides for limited access to the information by the Commission.

> Paragraph 9 requires that the communication is made every third month after 'the filing', and that the first communication takes place by the end of the first quarter of 2019.

Amendments to Articles 20(5) and 21 implement the recourse to standardised communication (directory). A yearly assessment is provided for in Article 23(3). Finally the penalties for infringements to national implementing provisions of the proposed article 8aaa and article 8aa are established (obligation to file a country-by-country report to tax authorities set by Council Directive (EU) 2016/881 (DAC 4)).

Under the proposal, the reporting requirements would enter into force on 1 January 2019, Member States would have to adopt the necessary provisions by 31 December 2018.

Views

Advisory committees

The European Economic and Social Committee adopted its opinion on the proposal (rapporteurs: Victor Alistar, Various Interests – Group III, Romania; Petru Sorin Dandea, Workers – Group II, Romania) on 18 January 2018. It welcomes the action proposed to address the problem of intermediaries enabling aggressive tax planning, through increasing transparency with the reporting obligation, but stresses that the final responsibility rests with taxpayers. In addition it recalls the need for the secure central directory to be used to record the information subject to administrative cooperation, the need for appropriate guidance related to hallmarks, and more precise requirements for qualification of reportable transactions (to prevent over-reporting from companies). It also calls for a review of the five-day deadline for reporting (based on its feasibility) while noting that there are unresolved issues (in particular with regard to the digital economy).

National parliaments

The subsidiarity deadline for the national parliaments was set at 25 September 2017. No reasoned opinion was issued.

Stakeholders' views[22]

Stakeholders shared their position in the public consultation. The proposal itself was generally welcomed, the analysis of the proposals has not yet been made public.

22 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

Legislative process

To adopt the directive, the Council needs unanimity, after consulting the European Parliament.

In the Council, the Commission presented the proposal to the Ecofin meeting on 11 July 2017 and work was initiated at working party level in the Working Party on Tax Questions (Direct Taxation – DAC). The technical examination of the proposal took place in the second half of 2017 and is currently continuing, with a view to achieving an early agreement on the file during the first half of 2018.

In the European Parliament, the report was prepared by the ECON committee (rapporteur: Emmanuel Maurel, S&D, France). The report was adopted by the committee on 24 January 2018. It is due for a vote at the February 2018 plenary session. The report supplements the proposal in the following areas, in particular:

> adding the case of a beneficial owner of another taxpayer as an 'associated enterprise';

> the obligations for auditors when conducting statutory audits of statement;

> clarifying the way a waiver can be granted to intermediaries;

> obligation to assess the arrangements and make available the necessary recourses for Member States;

> strengthened publicity, including the publication of a list of reported cross-border arrangements (ensuring anonymity) by the Commission;

> providing the Commission with access to the information communicated;

> strengthening the yearly assessment, and identification of necessary updates of the provisions with a view to preparing legislative proposals to close loopholes in existing legislation, as well as a three-year reporting obligation on the application of the directive by the Commission;

> public information of the number of arrangements reported to Member States' tax authorities with a description of those arrangements, of nationalities of taxpayers benefiting from them and of the number and extent of penalties imposed,

> Member States to submit to the Commission a list of arrangements found compliant with the directive;

> revision of the list of hallmarks every two years on the basis of delegated acts;

> foreseeing penalties, and publication by the Commission of an indicative table of penalties;

> adding a new hallmark related to effective taxation which is below the minimum legal tax rate for companies in the EU;

> encouraging the application of similar provisions at national level.

References

EP supporting analysis

C. Remeur, Understanding the OECD tax plan to address 'base erosion and profit shifting' – BEPS, EPRS, June 2017.

C. Remeur, Tax transparency openness, disclosure and exchange of information, EPRS, 2015.

Study Rules on independence and responsibility regarding auditing, tax advice, accountancy, account certification services and legal services, study prepared for Policy Department for Economic and Scientific Policy at the request of the PANA Committee, April 2017.

Study Role of advisors and intermediaries in the schemes revealed in the Panama Papers, study prepared for Policy Department for Economic and Scientific Policy at the request of the PANA Committee, April 2017.

Study The impact of schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States, study prepared for Policy Department for Budgetary Affairs at the request of the PANA Committee, April 2017.

Other sources

Taxation: mandatory automatic exchange of information in relation to reportable cross-border arrangements, European Parliament, Legislative Observatory (OEIL).

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